

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS

ARICA M. BOYLES,

Petitioner,

v.

**Civil Action No. 2:16CV71
Crim. Action No. 2:14CR6-2
(BAILEY)**

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge Michael John Aloi. Pursuant to Local Rule, this action was referred to Magistrate Judge Aloi for submission of a proposed report and a recommendation (“R&R”). Magistrate Judge Aloi filed his R&R on September 14, 2016 [Crim. Doc. 109 / Civil Doc. 3]. In that filing, the magistrate judge recommended that this Court deny and dismiss the petitioner’s § 2255 petition as it was incorrectly and untimely filed as a § 2255 motion.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge’s findings to which objection is made. However, this Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140,

150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Alois R&R were due within fourteen (14) days of filing of the same, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). The docket reflects that the petitioner accepted service on September 23, 2016 [Crim. Doc. 111]. To date, no objections to the R&R have been filed. Accordingly, this Court will review the report and recommendation for clear error.

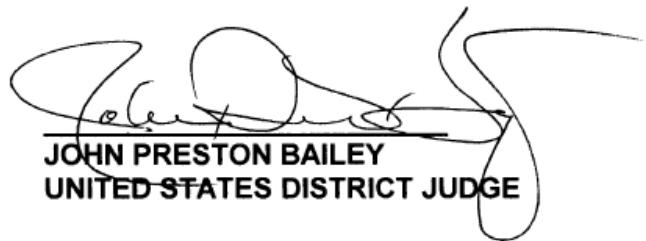
Upon careful review of the report and recommendation, it is the opinion of this Court that the Magistrate Judge's **Report and Recommendation [Crim. Doc. 109 / Civ. Doc. 3]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, the § 2255 Motion to Vacate, Set Aside, or Correct Sentence **[Crim. Doc. 104 / Civ. Doc. 1]** is **DENIED WITHOUT PREJUDICE**, and this matter is hereby **ORDERED STRICKEN** from the active docket of this Court. The Clerk is **DIRECTED** to enter judgment in favor of the respondent.

It is further **ORDERED** that, pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability as petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); ***Miller-El v. Cockrell***, 537 U.S. 322, 336-38 (2003) (in order to satisfy §2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong (citing ***Slack v. McDaniel***, 529 U.S. 473, 484 (2000)).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: October 11, 2016.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE